

Supreme Court, U.S.
FILED

IN THE SUPREME COURT OF THE UNITED STATES 1979
DOCKET NO. 79-776

DEC 8 1979
MICHAEL RODAK, JR., CLERK

ERICH KOKER and BEATRICE)
E. KOKER, husband and wife,) NO. 79-776
Plaintiffs/Appellants/)
Petitioners,) REPLY IN
v)
NOEL B. SAGE and WINETTA SAGE,) TO MOTION
husband and wife, and)
NOEL B. SAGE, JR.) TO DISMISS
Respondents/Appellee.)

REPLY IN OPPOSITION)

TO MOTION TO DISMISS)

Pro Se

Beatrice E. Koker, Pro Se
939 - North 105th Street
Seattle, Washington 98133

1-206-783-6998

IN THE SUPREME COURT OF THE UNITED STATES

ERICH KOKER and BEATRICE E. KOKER, husband and wife,) NO.79-776
Plaintiffs/Appellants/Petitioners,) -REPLY IN
v) -OPPOSITION
NOEL B. SAGE and WINETTA SAGE, husband and wife, and) -TO THE
NOEL B. SAGE, JR.) -RESPONDENTS
Respondents/Appellee) -MOTION TO
) -DISMISS
)
)

Dated: December 19, 1979: December 26, 1979:

COME NOW the plaintiff/appellant/petitioner Erich Koker and Beatrice E. Koker, husband and wife, in opposition to respondents/appellee motion to dismiss the appeal No. 79-776, Koker v Sage. This reply in opposition is pursuant to Rule 16(4) of the Rules of the Supreme Court of the United States. I respectfully ask this Court to accept jurisdiction of this appeal pursuant to the contents of the Jurisdictional Statement and Appendix.

Page 1 REPLY IN OPPOSITION TO MOTION TO DISMISS

REPLY TO RESPONDENTS: NATURE OF THE CASE:

The Respondent Attorney states page 1 paragraph 1 that the plaintiff/appellant Beatrice Koker was awarded judgment in the amount of \$4,600. This judgment is from a confused jury whom the jury foreman was compelled to persuade and convince approximately 2 hours, that the victim of permanent injuries in an admitted liability was "not guilty."

APPENDIX B-1: JURISDICTIONAL STATEMENT:

Ryan v Westgard 12 Wash App 500 (1975) is a Comparison Case for the adequacy of damages. The Court of Appeals Division I stated in Ryan v Westgard, *supra*, that \$145,000. is a sensible award for a drop foot injury. The same Court of Appeals Div. I upheld the jury verdict of \$4,600. for a drop foot injury for Beatrice Koker, and in addition knew the jury was confused.

Page 2 REPLY IN OPPOSITION TO MOTION TO DISMISS

REPLY TO RESPONDENTS: NATURE OF THE CASE:

(Respondent Attorney) The Respondent Attorney states page 1 second paragraph last 2 lines of his motion: Quote: "Appellant is now before this Court, apparently because of a claim that she was denied a fair trial." SEE: APPENDIX A-15(a)(b) JURISDICTIONAL STATEMENT. (The Appeal)

(Answer By Beatrice Koker:)

The Respondent Attorney is not complete. There are three federal questions for this appeal. (a) The Unfair Trial and the effect upon abuse of discretion by the trial court, followed by abuse of discretion by the appellate structure on appeal. (b) NO REHEARING, Constitutional Rights denied a citizen. (c) The NEW ISSUE. Original records and files removed from the custody and jurisdiction of the Court of Appeals Division One for 48 days "under color of law."

Cont'd

(Answer By Beatrice Koker - Cont'd:)

My claim in appeal to the United States Supreme Court is that my Constitutional Rights have been violated and the State of Washington Court of Appeal (including Supreme Court of Washington State) have abused their discretion in not permitting nor allowing remedy and redress for the stated facts throughout the Jurisdictional Statement.

The judgment of the trial in 1976 is the "EFFECT" of the unfair trial. There will be a separate tort action for the issue of the "CAUSE" of the EFFECT OF THE UNFAIR TRIAL.

FEDERAL QUESTIONS JURISDICTIONAL STATEMENT:

<u>APPEAL</u>	<u>St. Of Case</u>	<u>Federal Question Juris.</u>
(Unfair Trial)	p 55-107	p 115-122
(No Rehearing)	p 108-112	p 123-127
(NEW ISSUE	p 113	p 128-131

APPELLANT HAS NOT FAILED TO INVOKE THE
JURISDICTION OF THIS COURT

"A rose by any other name" does not apply to the controversy herein regarding ROA I-50 Rehearing. The Respondent Attorney says the Rule ROA I-50 is just changed in name and organization of the Rules of Appellate Procedure. Changed to 12.5(b)(3) and replaces the "rehearing rule" and is for the same purpose.

THOSE TWO RULES ARE ENTIRELY DIFFERENT!

The difference is this: ROA I-50 REHEARING
12.5(b)(3): MANDATE

Quoting:: (b) "When Mandate Issued by Court of Appeals."

"The Clerk of the Court of Appeals issues the mandate for a Court of Appeals decision terminating review upon stipulation of the parties that no motion for reconsideration, petition for review, or notice of appeal will be filed. In the absence of that stipulation, and except to the extent the mandate is stayed as provided in Rule 12.6, the Clerk issues the mandate."

APPELLANT HAS NOT FAILED TO INVOKE THE
JURISDICTION OF THIS COURT (Cont'd)

Quoting: Rule 12.5(b)(3): When Mandate Issued By Court Of Appeals

(3) "If a petition for review has been timely filed and denied by the Supreme Court, upon denial of the petition for review."

EXHIBIT III: BOTH RULES TO COMPARE:

***** In essence this rule is saying the end of the appeal can be stipulated to by the parties involved, or when the petition for review is denied by the Supreme Court, the MANDATE is issued by the clerk of the Court of Appeals. However, for a mandate to be issued there must be written notification as in 12.5(a):

EXHIBIT III:

***** THERE IS NO REHEARING. ROA I-50 is repealed and Rule 12.5(b)(3) is merely the issuance of a mandate upon denial of a petition for review and has nothing whatsoever to do with a "rehearing."

Cont'd

APPELLANT HAS NOT FAILED TO INVOKE THE
JURISDICTION OF THIS COURT (Cont'd)

***** My discovery pro se that no rehearing is unconstitutional came after filing the appeal to the United States Supreme Court in the due course of research for jurisdiction.

(The Intention For Rehearing:) EXHIBIT I:

Partially quoting from the letter sent by petitioner Beatrice Koker to the Washington State Supreme Court, dated February 5, 1979, regarding REHEARING: SEE: EXHIBIT I: Quote:

REHEARING: "A petition for rehearing will be filed by appellant/petitioner pro se 30 days from date of service. ROA I-50 Washington Rules of Court 1976 Desk Copy Page 412.

DATE OF FILING: "Monday March 5, 1979. Would you please verify this filing date to be correct? Date of Service Feb 3, 1979."

(Answer To Rehearing Intention:) EXHIBIT II:

A reply to the above letter was sent to me by the Washington State Supreme Court Clerk, Honorable John J. Champagne. EXHIBIT II HEREIN AND ALSO APPENDIX A-7 JURISDICTIONAL STATEMENT.

(Answer To Rehearing Intention:) EXHIBIT II:

Quote: "This is to acknowledge receipt of your letter of February 5, 1979, wherein you indicate that it is your intention to file a motion for reconsideration of the order entered by this Court on February 2, 1979, denying the above entitled petition for review."

"In accordance with RAP 12.5(b)(3) (ROA I-50 was repealed in 1975) the decision of the Court of Appeals became final on the date that the petition for review was denied. No further procedures are available under the rules, as a consequence, the Court will not consider any additional pleadings in the cause."

NO FURTHER PROCEEDINGS, INCLUDING REHEARING.

***** The repeal of ROA I-50 left in its wake Rule 12.5(b)(3), which rule is nothing more than FINALITY OF MANDATE UPON DENIAL OF PETITION FOR REVIEW EXCLUDING REHEARING AND CONSTITUTIONAL RIGHTS OF THIS PETITIONER.

SEE: APPENDIX A-8 through A-14 JURISDICTIONAL STATEMENT TRYING TO BE "HEARD." THERE IS A RESUME' OF MISERY RECORDED BECAUSE THERE IS NO REHEARING IN THE STATE OF WASHINGTON. PERSONAL KNOWLEDGE

APPELLANT HAS NOT FAILED TO INVOKE THE
JURISDICTION OF THIS COURT (Cont'd)

***** The Rule 12.5(b)(3) says no rehearing. The Clerk of the State Supreme Court reiterates no rehearing. No further procedures available after the petition for review is denied.

***** I begged to be heard. Pledged to be listened to. Agonized to be given redress and remedy and justice. To no avail.

***** There was vital evidence regarding deceit in trial and in desperation searched for a way to reach the State Supreme Court when the rehearing departed in repeal of a rule. I did not know at that time that my constitutional rights were being denied, but there was a desperate attempt to be heard as evidenced in APPENDIX A-8 through A-14 of the JURISDICTIONAL STATEMENT.

Page 9 REPLY IN OPPOSITION TO MOTION TO DISMISS

APPELLANT HAS NOT FAILED TO INVOKE THE
JURISDICTION OF THIS COURT (Cont'd)

***** Discovery of the unconstitutionality of "no rehearing" was made one day on the couch in the First Aid Room while thumbing through the Constitution of the State of Washington page by page.

***** The Respondent Attorney is apparently attempting to intercept Federal Question II - "The Rehearing." State v Pudman 177 P 2d 376, 65 Ariz 197, says "day in court is not complete" until the final rehearing before the Supreme Court."

***** The Appeal to the United States Supreme Court is taken under 28 U.S.C.A. §1257 and the Constitution. The Constitution of Washington State Art 4 §2 page 33 is xeroxed on page 123 of the Jurisdiction Statement and says: "Quote:!" Cont'd

Page 10 REPLY IN OPPOSITION TO MOTION TO DISMISS

p 33:

"Under 28 U.S.C 1257 restricting United States Supreme Court's review of state decisions to judgments rendered "by the highest court of the state in which a decision could be had," judgment rendered by department one of the Supreme Court of Washington is reviewable in United States Supreme Court where rehearing en banc before Washington Supreme Court is not granted as a matter of right. . "

SEE: PAGE 123 JURISDICTIONAL STATEMENT

***** (a) Comparison Rules Exhibit III herein, prove there was no rule substituted for rehearing. (b) There is intention in writing for rehearing (c) Denial of that intention for rehearing is unconstitutional.

***** I respectfully ask the jurisdiction be accepted in the United States Supreme Court and to enter the legal confines of the State Courts that have denied me both United States Constitutional Rights and State Constitutional Rights as per Federal Questions I - II - III.

APPELLANT HAS NOT FAILED TO INVOKE THE JURISDICTION OF THIS COURT (Cont'd)

"Under Color Of Law":

Respondent Attorney's motion to dismiss, his page 2 paragraph 2, mentions Civil Rights, saying the constitutional citations do only apply in district court jurisdiction to hear civil rights actions. He is referring to my Federal Question III - NEW ISSUE.

This is in regard to the original file and records of #4916-I taken from the Court of Appeals for 46 days, not even docketed as released from the court, and then 12 days extra "under color of law" time granted to retain the original files out of the custody of the appellate court. This unconstitutional deed is directly involved in this Appeal to the United States Supreme Court. The Motion for Recertification III will be heard in the State Supreme Court January 11, 1979. EXHIBIT IV:
Cont'd

APPELLANT HAS NOT FAILED TO INVOKE THE
JURISDICTION OF THIS COURT (Cont'd)

"Under Color Of Law:" (Cont'd)

The certification of the records for the appeal to the United States Supreme Court was defiled by the release of the original papers and would have been so even if they had been released to me.

This is the new issue directly involving this appeal and is a relevant issue and not a separate action in a district court. I do not want to sue anyone in district court. I simply need the certification of those records and have submitted 3 motions to the State Supreme Court to recertify the records to the approval and acceptance of the United States Supreme Court, and to take whatever steps necessary in sanctions and terms for those who are responsible so this removal of original files will not happen again to anyone else.

APPELLANT HAS NOT FAILED TO INVOKE THE
JURISDICTION OF THIS COURT (Cont'd)

"Under Color Of Law:" (Cont'd)

The jurisdiction for the NEW ISSUE in the Supreme Court of the United States is according to 42 USCA 1983-1984-1985 and 28 USCA 1343 (1) (2)(3)(4). I am trying to perfect an appeal peacefully. The United States Supreme Court will now have the jurisdiction to act in whatever manner necessary to obtain certification of those original records to their satisfaction and completion of this appeal if the jurisdiction is approved.

Vague: The Respondent Attorney is vague in his reasons for a motion to dismiss this appeal, just stating the appeal should be denied because the facts involved in this matter as well as the arguments made to the Court, in his opinion, do not invoke the Court's jurisdiction to hear the appeal. HOW? WHY? WHERE? SPECIFICS?

The motion is only the opinion of the Respondent Attorney and difficult to answer.

APPELLANT HAS NOT FAILED TO INVOKE THE
JURISDICTION OF THIS COURT (Cont'd)

The Record:

The injuries of petitioner are adversely affected by litigation even when represented by counsel. The repercussions are vastly increased and aggravated as pro se these past 3½ years with proof from the record:

RP Volume I p 64 Lines 1-6
1976

SOLA, CROSS

Q When this lawsuit is concluded?

A Uh-huh (Yes).

Q And you would agree that a pending lawsuit can be an emotional factor that effects a person's progress--

(Interjecting) It certainly can.

Q (Continuing) --while it's pending?

Page 15 REPLY IN OPPOSITION TO MOTION TO DISMISS

APPELLANT HAS NOT FAILED TO INVOKE THE
JURISDICTION OF THIS COURT (Cont'd)

CONCLUSION:

The Jurisdictional Statement and Appendix are two volumes of dedication in sacrifice for the purpose of truth and justice to reveal to the Highest Court In the Land what a citizen seeking justice must do when wronged in a court of law and no recourse on appeal.

The Jurisdictional Statement was written with respect and even a facet of forgiveness along with the courage demanded, with words as the only weapon to defend what is right.

The Legal Nomad:

This petitioner Beatrice Koker has wandered 3½ years, bewildered by the vast unending wilderness of lawbooks, but yearning for justice promised in the Constitution.

Page 16 REPLY IN OPPOSITION TO MOTION TO DISMISS

APPELLANT HAS NOT FAILED TO INVOKE THE
JURISDICTION OF THIS COURT (Cont'd)

The Legal Nomad:

I am in legal bondage, a slave to
injustice. I sincerely and respect-
fully ask you to accept jurisdiction
and hear my appeal and never dismiss
this case.

I ask you to reward
justice and set me free.

Respectfully Submitted,
Beatrice E. Koker
Beatrice E. Koker, pro se
939 - North 105th Street
Seattle, Washington 98133
Telephone: 1-206-783-6998

NOTARY PUBLIC:

Subscribed and Sworn to before me this 27th day of December, 1979
(SEAL) Ancila T. Clark
NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON
Residing at Kelso
(Place of Residence)

COPIES OF REPLY IN OPPOSITION TO MOTION TO
DISMISS SENT CERTIFIED MAIL TO:

Mr. Robert C. Taylor
4333 Brooklyn Ave N. E.
18th Floor
Seattle, Washington 98185

Mr. R. Scott Fallon
4333 Brooklyn Ave N.E.
18th Floor
Seattle, Washington 98185

Mr. Kenneth L. LeMaster
4333 Brooklyn Ave N.E.
18th Floor
Seattle, Washington 98185

DOCKET NO: 79-776

RECEIVED

February 5, 1979

FEB - 5 1979

CLERK OF COURT OF APPEALS
STATE OF WASHINGTON

The Supreme Court Justices
The State of Washington
Olympia, Washington 98504

RE: Koker v. Sage
Supreme Court No. 45846 No. _____
Appellate Court No. 4916-I

Honorable Supreme Court Justices:

DECISION: This letter is to acknowledge receipt of your decision "DENIED" of Petition for Review February 2, 1979. Thank you for your consideration of this matter.

REHEARING: A Petition for Rehearing will be filed by Appellant/Petitioner Pro Se 30 days from date of service. ROA I-50 Washington Rules of Court 1976 Desk Copy page 412.

DATE OF FILING: Monday March 5, 1979. Would you please verify this (Rehearing) filing date to be correct? Date of Service: Feb 3, 1979.

TEMPLE OF JUSTICE

On the "day of decision" en banc February 2, 1979, I was in the Supreme Court Courtroom in the elegance, dignity, beauty, quiet and peace it affords. Friends provided the financial way to Olympia for me. I was able to stay only one hour physically, but feel honored and grateful to have been in the Temple of Justice just once.

Just outside the courtroom there is a "Hall of History" with the photograph portraits of the Supreme Court Justices of the past 126 years. It will be greatly appreciated if you could tell me where to get the photographs and life history of each of these Supreme Court Justices.

Thank You.

COPY TO:

The Court of Appeals
Kenneth L. LeMaster, Defense/Respondent
R. Scott Fallon, Defense/Respondent
King County Clerk File

Sincerely,
Beatrice E. Koker
Beatrice E. Koker
939 - North 105th St.
Seattle, Washington 98133

JOHN J. CHAMPAGNE

CLERK

REGINALD N. SHRIVER

DEPUTY

The Supreme Court

State of Washington

Olympia

98504

February 6, 1979

Mr. Erich Koker
Ms. Beatrice Koker
939 North 105th Street
Seattle, Washington 98133

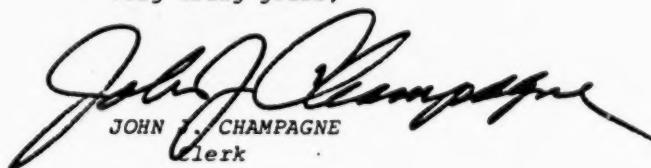
Dear Mr. Koker:

RE: Supreme Court No. 45846 - Koker v. Sage
Court of Appeals No. 4916-I
King County No. 77362

This is to acknowledge receipt of your letter of February 5, 1979, wherein you indicate that it is your intention to file a motion for reconsideration of the order entered by this Court on February 2, 1979, denying the above entitled petition for review.

In accordance with RAP 12.5(b)(3) (ROA I-50 was repealed in 1975) the decision of the Court of Appeals became final on the date that the petition for review was denied. No further procedures are available under the Rules, as a consequence, the Court will not consider any additional pleadings in the cause.

Very truly yours,


JOHN J. CHAMPAGNE
Clerk

JJC:aje

cc: Mr. Kenneth LeMaster
Mr. R. Scott Fallon
Honorable Richard Taylor, Clerk
Division I, Court of Appeals
Honorable Kenneth Helm, Clerk
King County Superior Court

Exhibit II

Exhibit II

RECEIVED

FEB 5 - 1979

Exhibit I

Washington Rules of Court 1976 Desk Copy

RULE 1-50. PETITIONS FOR REHEARING

Any party to an appealed case may, after an opinion has been filed, present to the court, in the manner and time as hereinafter provided, a petition for rehearing.

Every petition for rehearing shall be filed within thirty days after the opinion in the cause has been filed. No more than one petition shall be filed by the same party. The filing of a petition for rehearing shall suspend the decision of the court until the cause is finally determined.

When a rehearing is granted, the clerk shall notify counsel for the respective parties thereof.

When an answer to a petition for rehearing is called for by the court, the clerk shall mail to the attorney of the party from whom the answer is required a copy of the original petition, with a request that he file an answer thereto within fifteen days and serve a copy thereof on opposing counsel.

Three copies each of the petition for rehearing and of the answer thereto, if called for, shall be filed with the clerk.

Petitions for rehearing and answers thereto may be printed, mimeographed, or typewritten. If a petition for rehearing be granted, the court may require additional copies of the petition, answer and briefs to be supplied in the manner indicated by the court.

412

Washington Court Rules 1979
Rule 12.5 (b) (3)

RAP 12.5

RULES ON APPEAL

RULE 12.5 MANDATE

(a) **Mandate Defined.** A "mandate" is the written notification by the clerk to the trial court and to the parties of an appellate court decision terminating review. No mandate issues for an interlocutory decision.

→ (b) **When Mandate Issued by Court of Appeals.** The clerk of the Court of Appeals issues the mandate for a Court of Appeals decision terminating review upon stipulation of the parties that no motion for reconsideration, petition for review, or notice of appeal will be filed. In the absence of that stipulation, and except to the extent the mandate is stayed as provided in Rule 12.6, the clerk issues the mandate:

(1) 20 days after the decision is filed, unless (i) a motion for reconsideration of the decision has been earlier filed, (ii) a notice of appeal to the Supreme Court has been earlier filed, (iii) a petition for review to the Supreme Court has been earlier filed, or (iv) the decision is a ruling of the commissioner or clerk and a motion to modify the ruling has been earlier filed.

(2) If a motion for reconsideration is timely filed and denied, 30 days after filing the order denying the motion for reconsideration, unless a petition for review to the Supreme Court or a notice of appeal to the Supreme Court has been earlier filed.

→ (3) If a petition for review has been timely filed and denied by the Supreme Court, upon denial of the petition for review.

The Supreme Court

State of Washington

Olympia

98504

November 28, 1979

Ms. Beatrice E. Koker
939 North 105th Street
Seattle, Washington 98133

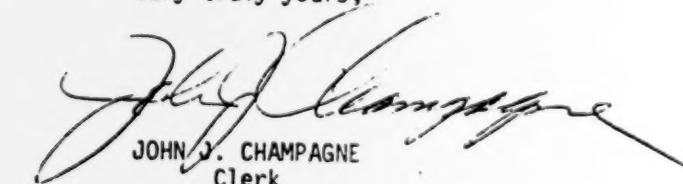
Mr. Kenneth L. LeMaster
Mr. R. Scott Fallon
Attorneys at Law
Plaza Building
4333 Brooklyn Avenue N.E.
Seattle, Washington 98105

Gentlemen and Ms. Koker:

Re: Supreme Court No. 45846 - Erich Koker, et ux. v. Noel B. Sage, et ux., et al.
Court of Appeals No. 4916-1

Petitioner Koker's Motion to Modify the Clerk's Ruling of November 19, 1979, refusing to file previous motions regarding the above referenced cause, was filed on this date. The motion will be set for consideration before a Department of the Court on January 11, 1979.

Very truly yours,


JOHN J. CHAMPAGNE
Clerk

JJC:dd

cc: Honorable Richard D. Taylor, Clerk
Division I, Court of Appeals

Exhibit III

Exhibit IV